

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Rules and Regulations Implementing the
Telephone Consumer Protection Act of
1991

CG Docket No. 02-278

**Declaration of Jeffrey A. Hansen on the Petition for Declaratory Ruling of All
About The Message, LLC**

1. I, Jeffrey A. Hansen, declare as follows:

2. My name is Jeffrey A. Hansen. I am an adult over the age of 18, a resident of the state of California. Unless indicated otherwise, I have personal knowledge of each of the matters stated herein, and if called to testify I could and would testify competently about them.

Experience and Credentials.

3. I am the principal of Hansen Legal Technologies, Inc. My firm is in the business of handling Information Technology, including investigations and analysis of electronic data. I have served as an expert or consultant in more than 150 TCPA class action lawsuits, and as an expert or consultant in numerous other civil cases.

4. With regard to my experience as an expert and consultant in legal matters, generally, I have frequently served as an expert witness and consultant to law firms in conducting computer forensic analysis. I have also assisted in electronic discovery issues.

5. I also frequently act as a consultant to companies that engage in the use of autodialers, and I am familiar with their use and procedures, and the technical aspects of that business. In that capacity, I have assembled, configured, maintained, operated all aspects of autodialers, and interfaced with the telecommunications providers through whose networks the autodialers operate.

6. I have set up and maintained all aspects of predictive dialers and autodialers, from predictive dialers operating with just three telephone lines to outbound call centers, run from three locations, capable of generating over 1 million calls per hour. When building these systems, I have used various software and hardware solutions for predictive and autodialers, both proprietary and open source, and customized those systems for their particular uses. I myself have used and maintained predictive and autodialers, and trained others to do the same.

7. Over the last twenty-seven (28) years, I have also had extensive experience in a broad range of other areas in the electronic and information technology fields and obtained many certifications such as MCP 4.0, A+, Network+, MCP 2000, MCSA, MCSE, Linux+, I-Net+, Security+, CIW Security Analyst. From the hardware perspective, I have extensive experience in troubleshooting and repairing at the component level, and building various systems for various purposes. I have designed, built and maintained computer networks in a variety of environments from commercial businesses to very large DoD networks. I have taught approximately 1,000 others the skills to become computer network engineers themselves.

8. I have had extensive experience in dealing with security breaches and hardening computer networks against those breaches. I have handled many computer forensic and E-Discovery matters, including internal investigations in companies, volunteering at the FBI sponsored Regional Computer Forensics Laboratory, and founding a computer forensics and E-Discovery firm over 9 years ago. I have also had extensive experience with the set-up and use of predictive and autodialers. (*See Exhibit A – Resume of Jeffrey A. Hansen*).

9. A list of cases I have been called to testify is set out in paragraph 18 below.

Agent-less pre-recorded and Artificial voice calls to wireless voicemail cause a cell phone to ring

10. When a consumer subscribes to wireless phone service, it is typical for their service to include voice, data, SMS and voicemail. The phone will alert the consumer with a tone or “ring” when receiving either a voice call, SMS message or voicemail. Petitioner is simply applying a very narrow definition to “ring.” To apply such a definition would exclude any type of calls as cell phones typically allow for the customization of ring tones. I myself am woken up regularly at night with these various

ring tones. The literal ringing of a bell has long been replaced with audio files, and the industry still recognizes these audible notifications as the phone “ringing.”

**Agent-less pre-recorded and Artificial voice calls to wireless voicemail
still require dialing a wireless number**

11. When telephones first became available to consumers, they did not have any means to “dial” a phone number. Instead, an operator would connect the caller to the called party by physically patching the call. The phone was later equipped with a circular “dial” containing 10 digits, and the caller would literally “dial” the phone number they wish to call. Since that time, the “dial” has been replaced with a keypad and later with touch screens, however, the industry still applies the name “dial.” Autodialers, of course, do not operate with a rotary “dial,” but still the term is used whenever attempting to establish a connection between a caller and a call recipient. Petitioner again attempts to narrow the definition of “dial” which would exclude all phones for the last few decades.

12. Without disclosing how, the Petitioner explains that the call is made to a wireless number without calling the wireless number directly. The term “call” is not defined in the industry by the protocol used. For example, a landline call could use 5ESS, NI2 or VoIP; a wireless call could use CDMA or GSM; SMS messages can be sent through an aggregator, email to SMS gateways or SMPP. In this case, Petitioner describes the protocol used here as a “data channel” which would be a true statement for any protocol, including the traditional calls described above.

13. The way that Petitioner describes the method of calling wireless numbers, they attempt to create a separation between the autodialer and the wireless number. This is a similar argument that was raised by the mass SMS companies. Just as with blast SMS message, a list of wireless phone numbers is loaded into the autodialer. The numbers are then passed off to an intermediate system (an email to SMS gateway or an

aggregator) then the SMS messages are delivered to the recipient's wireless phone. This is precisely how Petitioner explains their autodialer to work. I would highlight that an autodialer is a system made up of several components, each responsible for their own function within the overall system. Many of these components span over large geographical locations and are owned by other parties. This is the case with SMS message blasting in which one might operate the dialer on premise or hosted by a third party in which it is accessed via the internet. The SMS autodialer would then connect to the SMS gateway operated by the wireless carriers before the message is sent to the recipient's wireless phone. Operators of SMS Blasting autodialers can use the exact same argument as Petitioner as both can break down the the system into its individual components and say their component did not call the wireless number. This argument, however, also would state their system can not make any phone call. I would note that Petitioner recognizes a SMS message as a call. This same kind of reasoning could also be applied to say nobody but the phone company calls those wireless numbers as all phone calls must go to the phone company switch, the central office and to the recipient's phone carrier before "ringing" the recipients phone. I would note that none of these protocols or systems the call traverses through define an autodialer within the industry. Just as with any agent-less autodialer (voice or SMS), a list of phone numbers is loaded into a campaign on the dialer and messages are delivered to the phone numbers on that list. Importantly, the result for the consumer is the same, which is the receipt of unwanted voice-mails that they are forced to either listen as they will not even know if the voice-mail should be deleted until they listen to it.

Recipients of the call are charged for the call

14. Most wireless phone plans do not include unlimited voicemail. While for a fee, one might be able to increase their voicemail box size, the size of voicemail boxes is not large enough to accommodate pre-recorded messages sent *en masse*. Most

everyone has heard the recording “mailbox is full” when placing a call. Sprint wireless subscribers have an inbox that holds only 30 messages (*See Exhibit B - Know how many messages can be stored in your voicemail box*). Receiving pre-recorded messages would require a consumer to spend substantial amounts of time reviewing and deleting voicemail messages. For many subscribers, allowing their voicemail inbox to fill up rendering it useless might be their only option. Some subscribers with smart phones can of course pay more in fees for their data usage and download those messages from their voicemail to their phone using more storage on their phone. This option however would require the user to be somewhat of a sophisticated user of their phone.

Methods of leaving “Ringless Voicemails”

15. While it is unclear the precise method Stratics Networks uses to establish a connection with the call recipient, there are three methods used today:

- a. With an agreement with the wireless carriers, use an internet connection to the voicemail servers and deliver messages to the specific wireless numbers associated with each mailbox.
- b. Use a secondary list of numbers known as “voicemail pilot numbers” or “voicemail back door numbers.” Most of the wording in the Petitioners petition suggests this is the method; it is the only one that uses landline numbers in any part of the process. The landline numbers for the various voicemail servers are used to establish a connection with the phone carrier, then the list of wireless numbers is used to deliver the pre-recorded messages. This method has earned the name “voicemail back door numbers” because it was never intended to be used by telemarketers.
- c. The third method involves making two calls to each wireless number. One call to tie up the line and another call to go to voicemail while the line is tied up then immediately hanging up on the first call. This method requires

dialing the wireless number twice quickly and immediately hanging up on the first call before the phone rings.

Autodialers are defined by their capabilities not how they are used

16. The autodialer used to send agent-less pre-recorded messages is the same type of autodialer used for any other “voice broadcast” campaign. The dialer will automatically dial any list of numbers loaded into it, whether they be landline or wireless.

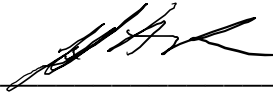
17. Within the industry, “Automatic Telephone Dialing System”, or “auto-dialer” for short, has been attributed to any system with the capacity to automatically dial phone numbers. Naturally, for a system to automatically dial phone numbers, the system must either produce or store those phone numbers. Within the industry, these terms were not applied to systems that would only call one pre-programed number such as a home security system or speed dial, but were applied to systems used for telemarketing or call centers. These names have been attributed to these systems for over 50 years. There are different types of “auto-dialers” such as “predictive dialers,” “power dialers,” and agent-less dialers such as those that deliver pre-recorded messages (commonly referred to as “voice broadcasting”), artificial voice (“text to speech”) or SMS messages (“commonly referred to as SMS broadcasting” or “SMS Blasts”). Within the industry, these systems are not defined by any other terms when used in other dialing modes such as manual or preview. The fact that these terms have been used to define auto-dialers for over 50 years can be corroborated or discovered by a few clicks through the Patent Office’s website (new patents cite old patents) which yields these historical insights. Within the industry, autodialers only need the capacity to store or produce numbers and call them to be an ATDS.

18. I have been called to testify in the following civil matters: *Craig Casey v. Valley Center Insurance Agency Inc.*, Case No. 37-2008-00004378-SC-SC-CTL (San

Diego Superior Court); *Stemple v. QC Holdings, Inc.*, Case No. 12-CV-1997-CAB-WVG (S.D. Cal.); *Hahn v. Massage Envy Franchising*, Case No: 3:12-cv-00153-DMS-BGS (S.D. Cal.); *Abdeljalil v. General Electric Capital Corporation*, Case No: 12-cv-02078-JAH-MDD (S.D. Cal.); *Jasmina Webb v. Healthcare Revenue Recovery Group, LLC* Case No: C 13-0737 JD (N.D. Cal.); *Balschmiter v TD Auto Finance, LLC*, Case No: 2:13-cv-01186 (E.D. Wisc.); *Jordan Marks v Crunch San Diego, LLC*, Case No. 14-CV-0348-BAS (BLM) (S.D. Cal.); *Peter Olney v Job.com*, Case No: 1:12-cv-01724-LJO-SKO (E.D. Cal.); *Carlos Guarisma v ADCAHB Medical Coverages, Inc. and Blue Cross and Blue Shield of Florida, Inc.*, Case No: 1:13-cv-21016-JLK (S.D. Fla.); *Farid Mashiri v Ocwen Loan Servicing, LLC*, Case No: 3:12-cv-02838 (S.D. Cal.); *Monty J. Booth, Attorney at Law, P.S. v Appstack, Inc.*, Case No. 2:13-cv-01533-JLR (W.D. Wash.); *Rinky Dink, Inc. d/b/a Pet Stop v World Business Lenders, LLC*, Case No. 2:14-cv-00268-JCC (W.D. Wash.); *Michael Reid and Dave Vacarro v. I.C. Systems, Inc.*, Case No. 2:12-cv-02661-ROS (D. Ariz.); *Jeffrey Molar v NCO Financial Systems* Case No. 3:13-cv-00131-BAS-JLB (S.D. Cal.); *Latonya Simms v Simply Fashion Stores LTD, and ExactTarget, Inc.*, Case No. 1:14-CV-00737-WTL-DKL (D. Ind.); *Sueann Swaney v Regions Bank*, Case No. CV-13-RRA-0544-S (N.D. Ala.); *Hooker v SiriusXM*, Case No. 4:13-cv-00003 (AWA) (E.D. Va.); *Diana Mey v Frontier Communications*, Case No. 13-cv-01191-RNC (D. Conn.); *Rachel Johnson v Yahoo! Zenaida Calderin v Yahoo!* Case No. 14-cv-2028 14-cv-2753 (N.D. IL); *Philip Charvat v Elizabeth Valente*, Case No. 12-cv-5746 (N.D. IL); *Robert Zani v Rite Aid Hdqtrs. Corp.*, Case No. 14-cv-9701(AJN)(RLE)(S.D. NY), *A.D. v Credit One Bank* Case No. 1:14-cv-10106 (N.D. IL); *Oerge Stoba, and Daphne Stoba v Saveology.com, LLC, Elephant Group, Inc.; Time Warner Cable, Inc.*, Case No. 13-cv-2925-BAS-NLS (S.D. Cal.); *Shyriaa Henderson v United Student Aid Funds, Inc.* Case Number: 3:13-cv-1845-L-BLM (S.D. Cal.); *Marciano v Fairwinds Financial Services* Case No. 6:15-CV-1907-ORL-41 KRS (M.D. Fla); *Alice Lee v Global Tel*Link Corporation*, Case No. 2:15-cv-02495-ODW-PLA [consolidated with 2:15-cv-03464-ODW-PLA (C.D. Cal.); *Alan Brinker v Normandin's*,

Case No. 5:14-cv-03007-EJD-HRL (N.D. Cal.); *Spencer Ung v Universal Acceptance Corporation*, Case No. 15cv127 RHK/FLN (D. Minn); *Seana Goodson v Designed Receivable Solutions*, Case No. 2:15-cv-03308-MMM-JPR (C.D. Cal); *Dominguez v Yahoo!, Inc.*, Case No. 2:13-cv-01887 (E.D. Penn); *Eli Ashkenazi v Bloomingdales, Inc.*, Case No. 3:15-cv-02705-PGS-DEA (D. N.J.); *Abante Rooter and Plumbing, Inc. v Birch Communications, Inc.* Case No. 1:15-cv-03562 (N.D. GA); *Roark v Credit One Bank*, Case No. 0:16-cv-00173-RHK-FLN (D.Minn); *Carl Lowe And Kearby Kaiser v CVS Pharmacy, Inc., Minuteclinic, LLC, and West Corporation*, Case No. 1:14-cv-03687 (N.D. Ill); *Zaklit v Nationstar Mortgage, LLC.*, Case No. 5:15-CV-02190-CAS-KK (C.D. Cal); *Charles Banks v Conn Appliance, Inc.*, Case No. 01-16-0001-0736 (American Arbitration Association); *Rajesh Verma v Memorial Healthcare Group*, Case No. 3:16-CV-00427-HLA-JRK (M.D. Fla); *Herrick v Godaddy.com*, Case No. 2:16-cv-00254-DJH (D.AZ); *In Re: Monitronics International, Inc., Telephone Consumer Protection Act Litigation*, Case No. 1:13-md-02493-IMK-JSK (N.D.W.V.); *Diana Mey v Ventura Data, LLC And Public Opinion Strategies*, Case No. 5:14-CV-123 (N.D.W.V.); *Lucero v Conn Appliances*, Case No. 01-16-0004-7141 (American Arbitration Association); *Dennis v Progressive Leasing*, Case No. 01-16-0002-8798 (American Arbitration Association).

19. I declare that the foregoing is true and correct, subject to the laws of perjury of the United States. Executed in Spring Valley, CA on this ____ day of May 2017.



Jeffrey A. Hansen